

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 544 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PANCHMAHALS DIST.HIGHER EDUCATION TRUST

Versus

GUJARAT UNIVERSITY

Appearance:

MR MUKESH R SHAH for Petitioner

MR NILAY ANJARIA for DS NANAVATI for Respondent No. 1

MS SD TALATI, AGP for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 23/04/98

ORAL JUDGEMENT

Rule. Learned Counsel Mr.Nilay Anjaria for Mr.D.S. Nanavati and Learned AGP Ms. Talati waive the service of Rule on behalf of the respondents nos.1 and 2 respectively. Heard at the request of learned Counsel for the parties.

2. This petition is filed by the petitioner Trust, seeking a mandamus that the respondent University be directed to comply with the order passed by the State Government in Appeal on 29.8.1997 for granting affiliation to the Arts College, managed by the petitioner Trust with effect from 15th June 1997.

3. The facts relevant for the present purpose are that, on 27th February 1996, the petitioner Trust made an application for grant of affiliation for the year 1996-97 along with the necessary fees. Since the issue of grant of affiliation for the year 1993-94, 1994-95, and 1995-96 was already pending for consideration before the University as a result of the remand order made by the State Government earlier, with which I am not at present concerned. The application for grant of affiliation for 1996-97 was returned by the University vide communication dated 7.2.1996. Aggrieved by the said action of the University, the petitioner preferred Special Civil Application No.4854 of 1996 before this Court. During the course of hearing, a statement was made by the Counsel on behalf of the University that, communication dated 7th February 1996 be treated as rejection of the application for affiliation for the academic year 1996-97 and the petitioner may be permitted to approach the State Government by filing appeal under Section 33(8) of the Gujarat University Act. The order was made in terms of the aforesaid submission made on 27.1.1997 on behalf of the University. Consequently, the appeal came to be filed before the State Government under Section 33(8) of the Gujarat University Act. By the order dated 29.8.1997, the appeal was allowed. Since the application was for affiliation for 1996-97, which academic year had already expired and the appeal had been filed before the commencement of the year 1997-98 in pursuance of the circumstances mentioned above, the affiliation was directed to be granted with effect from 15th June 1997, that is to say, from the current session. The university having taken no action inspite of reminders from the petitioner as well as from the Dy. Secretary, Education, whose letter dated Nil, received by the University on 17th October 1997, which has been placed on record as Annexure.J, the present petitioner had filed this petition for directing the respondent University to allow the petitioner Trust to run the Arts College, at village Shimaliya, Panchmahals, with effect from 15.6.1997, as per the order of the State Government dated 29.8.1997 and to grant all consequential benefits.

4. The plea taken by the respondent University in the return was that the order dated 29.8.1997 suffers

from various infirmities and the same is not consistent with the realities of the situation. It also asked the State Government to review the order dated 29.8.1997 and it says that the granting of affiliation after 25.10.1997 is in breach of Ordinance 69 and is contrary to the said Ordinance. However, it was urged in the reply that, though the order dated 29th August 1997 cannot be implemented for the academic year 1997-98, the University is ready and willing to grant affiliation for academic year 1998-99. It has also been stated in the return that the petitioner is not fit to be granted affiliation for the year 1996-97. Return is conspicuously silent about eligibility for academic year 1997-98.

5. Having heard the learned Counsel for the parties, I am of the opinion that the resistance of the University for not implementing the order in Appeal as it is, is not well founded.

6. Section 33 of the Gujarat University Act deals with the subject of affiliation, recognition and approval. In the first place, before a College starts functioning, it has to apply for affiliation before 31st March of the year preceding the year in which the college is proposed to be started, on which the Executive Council has to consider whether there is a need of college in the locality. This question is also subject to appeal before the State Government. Once the decision is taken that the college will supply the need in the locality, it has to satisfy the requirement of Sub-section (5) of the Act. Thereafter, the Executive Council has to consider the application and decide it. If the affiliation is not granted in part or full, the grounds of such refusal have to be stated in the order. Sub-section (8) of Section provides that, where an application of a college or a part of such application is refused under Section (7) the college may make an appeal to the State Government against such refusal and the decision of the State Government in such appeal shall be final.

7. From the aforesaid scheme of Section 33 of the Act of 1949, it is apparent that in the first place Executive Council is required to make a speaking order, in case it rejects the application for grant of application whether fully or partly. The State Government has been vested with the power of Appellate Authority and in that capacity it is the quasi judicial functionary determining the issue between the applicant and the University in connection with the application for affiliation and the order of the Appellate Authority on such issue has been made final and is not subject to

further challenge, that is to say, the order of the Appellate Authority is binding on the parties.

8. Speaking plainly from that point of view, once the order passed by the State Government on the Appeal arising out of the proceeding commenced with the application dated 27th February 1996 came into existence, the University was bound to comply with that order unless the same is challenged and set aside in appropriate proceedings. Without raising objections to its correctness the University cannot arrogate to itself power to ignore the order or to implement the same with modifications on its own treating of to be erroneous on any ground whatsoever considering that order should have been otherwise. If, without challenging the correctness of the order, the University is permitted to sit over the correctness of the judgment made by the Appellate Authority and to decide upon itself whether to comply with the directives contained in the Appellate order or to substitute its own judgment on the merit of the order, it would not only be setting at naught the provisions of Sub-section (8) of Section 33 of the Act, but negation of the very basis of Rule of Law if the decision on any issue by the authority invested with the power to decide such issues between the parties are allowed to be infructuated by the volition of any of the party by sitting over the judgment of deciding Authority. This is what has been the contention of the University in this case. In fact, the last paragraph of the reply offers a clue that either it is a case of misunderstanding the order or it wants to create a hiatus on account of time taken on decision making process.

9. It may be recalled that the application dated 27.2.1996 was for grant of affiliation for academic year 1996-97, but in fact, the affiliation has been granted for the year 1997-98 after the appeal has been filed in April 1997 in pursuance to the statement made by the Counsel for the University that the order returning the application to be treated as an order of rejection and the applicant may be permitted to file application under Section 33(8) of the Gujarat University Act. It was at the instance of the University that the petitioner had taken the matter in appeal in respect of the application for 1996-97. That appeal came to be decided by order dated 29.9.1997 about two months after the session has commenced in June 1997. In the circumstances, as the academic year 1996-97 had been over and the current session has recently started, the State Government has thought it fit to grant the affiliation for the current academic year, i.e. 1997-98. However, the University is

prepared to grant affiliation on the basis of the same order from 1998-99 and not with effect from June 1997. It only amounts that the University wants to substitute its own date of affiliation in the order passed by the State Government because, according to it, the State Government was not justified in making that order. On one hand, the University says that the affiliation can be granted for 1998-99 and on the other, it cannot grant affiliation for 1996-97 as the academic year is over. The petitioner has claimed affiliation in this petition with effect from 1996-97 and the State Government has not granted affiliation with effect from 1996-97. Yet, by making reference to a period which already over and not concerned in these proceedings, the University has kept silence as to why for the academic year 1997-98, which is current academic year, the affiliation cannot be granted for which the order stands if on the same grounds, the order granting affiliation can be given effect from 1998-99. It has been urged by learned Counsel for the University that, grant of mandamus would cause a lot of complications to the University, however, no explanation was offered as to what complications would arise. It has been the case of the University that no examination has been held in respect of any students of the petitioner's college for the academic year 1997-98 which is now coming to close. The vague statement that by the affiliation with effect from June 1997 would result in giving admissions to old students by backdoor entry, one wonders if old students could be admitted with effect from 1997 if affiliation is granted with effect from that date, then what prevents the petitioner to carry on the same stock of students for the year 1998-99, once affiliation is granted with effect from that date.

10. Ordinarily the right or prayer to grant relief relate to date of application. When an appeal is provided against order of original authority, it is consideration of the same right that was considered by the authority from whose order appeal lay. In absence of any specific order or provision to contrary, the order in appeal, results in grant of prayer will relate to prayer made in application unless otherwise ordered. It cannot be, and is not the case of respondent either, that appeal is provided under Section 30 to consider grant of affiliation for a future period only as if an application for fresh academic year. That will make the very provision of appeal look out of place. No time limit has been fixed for deciding the application or appeal. The authority cannot infructuate the applicants of legitimate expectations by sheer inaction. Permitting that will be opening flood-gates for abuse. Provision has been made

investing the appellate authority with power to make such orders as it thinks fit. Thus if keeping in view the ground reality the appellate authority thinks that though it is not possible to grant application from the date of application, but there is no impediment in granting from the current academic year, which has not travelled long the order cannot be said to be suffering from any error or be termed as unfair.

11. It may also be noticed that in reply, with reference to the letter of Dy.Secretary, it has been stated that granting of affiliation after 29th August 1997 is in breach of Ordinance 69. However, it does not take into account that the notice of order dated 29.8.97 has been received by the University much earlier to that, in response to which, it has already asked for review of the order in September 1997 itself. Moreover, this contention also ignores the fact that there is bound to be time lag between making the application and its final disposal whereby the Executive Council or in case the Executive Council refuses, the affiliation by the Appellate Authority. In that event, it cannot be said that while considering the application which has been made in time for a particular academic year, the Appellate Authority had no authority to direct the affiliation to be granted with effect from any date after the date of application depending upon the facts and circumstances of each case or the point of time at which the application is decided. The Appellate Authority was not considering the application for the first time so as to deny the benefits of affiliation for a particular period merely because the Academic Council has first declined to grant the same and on review by the Appellate Authority has been found to be wrongly declined. If the view taken by the learned Counsel is accepted, it would mean that the remedy of appeal would be of academic importance because, once the Academic Council refuses the application made in time, by driving the applicant to file an appeal and award its decision, would result in expiry of dates fixed in statute and ordinance and the application for the next year will have to be de-novo. Thus, ensuring that even if the order of the academic Council is reversed, in appeal, the applicant does not get any relief. Such interpretation which will be setting at naught the very object of the statutory provisions of appeal, which cannot be accepted.

12. The petition, is, therefore, allowed. The respondent University is directed to give effect to the order of the State Government dated 29th August 1997

under Section 33(8) of the Gujarat University Act, 1949
without any further delay. Rule is made absolute
accordingly. There shall be no order as to costs.

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